



POLLACK SOLOMON DUFFY LLP
43 West 43rd Street, Suite 174, New York, NY 10036
617-439-9800
prakhunov@psdfirm.com

July 26, 2023

VIA ECF

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Case No. 22-cv-05276-PAE
Motion for Extension of August 25, 2023 Discovery Deadline

Dear Judge Engelmayer:

This firm represents defendant and counterclaim/third-party plaintiff Rock Fintek LLC. Rock Fintek respectfully submits this letter pursuant to paragraph 2.C of Your Honor's Individual Practices seeking a prompt informal telephonic conference in advance of filing a partially opposed-to motion to extend the August 25, 2023 discovery deadline in this case through December 31, 2023. The extension sought by Rock Fintek is reasonable and necessary because: 1) significant document issues remain to be worked out, including deficiencies with productions by the Adorama Parties¹ (who made a supplemental production as recently as July 11, 2023) and by the JNS Parties² (who only made their *first* document production *at 8:20 p.m. yesterday, July 25, 2023*) and multiple outstanding third-party subpoenas served by all parties; 2) glove sampling and inspection efforts are still to be completed through the month of August; 3) no party or third-party depositions have taken place yet; and 4) the undersigned lead counsel for Rock Fintek is set to begin a month-long jury trial in Massachusetts Superior Court on September 5, 2023, with jury selection to take place on August 15, 16, 23 and 24,³ and another 3-4 week jury trial in the United States District Court, District of Maine (Bangor) starting on November 7, 2023.⁴ Moreover, it is anticipated that various religious and secular holidays between now and end of the year will complicate scheduling. Surprisingly, counsel for the JNS Parties and Adorama Parties have refused to assent to this extension, instead insisting on an October 15 discovery cutoff, which is impossible in light of Rock Fintek's counsel's trial commitments. This is the first request for an extension of discovery in this matter and no cognizable prejudice to any party or undue delay would result.

¹ Kitchen Winners NY Inc., Adorama Inc., and Joseph Mendlowitz.

² JNS Capital Holdings, LLC and Joel Stern.

³ *Wray v. Children's Hospital Corp.*, No. 1584CV02734 (Mass. Super. Ct., Suffolk Cty.)

⁴ *Lobster 207 v. Pettegrow et al.*, Civil Action No. 1:19-cv-00552-LEW (D. Maine)

Procedural Background and Status of Discovery

Rock Fintek removed this case from State Court on June 22, 2022 and filed its counterclaims and third-party claims against the Adorama Parties and JNS Parties on June 24, 2022. The Adorama Parties moved to dismiss on July 15, 2022. Pursuant to the Court's July 18, 2022 Order (ECF 35), Rock Fintek filed an Amended Counterclaim and Third Party Complaint on August 5, 2022. The Adorama Parties filed a renewed motion to dismiss on August 26, 2022. After obtaining an agreed-upon extension, the JNS Parties filed their motion to dismiss on September 7, 2022. On March 31, 2023, the Court ruled on the motions to dismiss (ECF 68) and on May 1, 2023 entered the current Civil Case Management Plan and Scheduling Order (ECF 82) setting August 25, 2023 as the discovery deadline. None of the parties has sought or obtained any extensions of the discovery deadline.

As this Court is aware from recent filings, the parties have spent considerable time and effort over the past months coordinating among themselves and non-parties Ascension Health and Medline Industries inspection and sampling efforts, and have yet to complete the inspections of the gloves at two additional third-party owned warehouses in Montgomery, NY and Romulus, MI. The Adorama Parties earlier today notified the other parties that they are not available to visit the Romulus warehouse until, at the earliest, August 16, 2023. There is no doubt that the inspection and sampling effort will be subjects of deposition questioning.

With respect to party document productions, to date, Rock Fintek has produced thousands of pages of responsive documents, including a significant production on September 21, 2022 and a near 3,000 pages supplemental production on June 27, 2023. The Adorama Parties first produced 220 pages of documents on April 28, 2023 and a supplemental production of 410 pages on July 11, 2023. The JNS Parties, however, failed to produce a single document until 8:20 p.m., yesterday, July 25, 2023, and made an additional production of certain messages *this morning*. Upon a brief review of the JNS Parties' production, and a review of the Adorama Parties' productions, it appears that those productions omit any usable metadata and do not contain a complete set of internal messages and email communications, among other things, which will need to be resolved either through meet and confer efforts or motion practice.

No depositions have been taken in this case. The parties have agreed to conduct depositions remotely to facilitate scheduling and Rock Fintek has proposed to complete all party depositions in mid-October, in light of outstanding document issues and undersigned counsel's September trial commitments, while leaving some additional time in November and December to conduct follow-up discovery and any outstanding third-party discovery.

In addition, all parties have issued third-party subpoenas, in response to which no documents have yet been produced, including Adorama and JNS Parties' subpoenas to Ascension Health and Medline Industries, and Rock Fintek's subpoenas to various trucking companies and Mendel Banon, who Adorama Parties claim is not under their control despite being a lead person on the contractual relationship with Rock Fintek. In addition, Rock Fintek intends to issue email header subpoenas to Google. Undoubtedly documents received in response to these subpoenas will be the subject of deposition questioning.

Trial Commitments of Rock Fintek's Lead Counsel in 2023

The undersigned lead counsel for Rock Fintek is set to begin a month-long jury trial in Massachusetts Superior Court on September 5, 2023, with jury selection to take place on August 15, 16, 23 and 24, and another 3-4 week jury trial in the United States District Court, District of Maine (Bangor) starting on November 7, 2023. The upcoming Massachusetts and Maine trials will require significant pretrial work and witness preparation. Rock Fintek's lead counsel, Phillip Rakhunov is a partner in a small firm with six full-time lawyers, who are all involved in one way or another in upcoming trial work. When counsel for Rock Fintek raised his trial commitments with the other parties when conferring about this extension request, counsel for JNS Parties glibly responded "*You have an associate.* I can consent to an extension through September with a complete schedule for party discovery. I will not consent to a never ending extension because you aren't interested in handling the case." (emphasis added). Putting aside the unprofessional and hyperbolic nature of that email, counsel for JNS Parties does not get to dictate to Rock Fintek its choice of counsel for conducting depositions in this case.

The Sought Extension Is Reasonable and Appropriate for the Needs of this Case.

As detailed above, an extension through the end of 2023 to complete discovery in this matter is entirely reasonable given the parties' need to complete all party depositions, unresolved document issues, and outstanding third-party discovery, particularly in light of undersigned counsel's remaining 2023 trial commitments and multiple holidays between September and December. Less than four months have gone by since the Court's ruling on motions to dismiss and no discovery extensions have been sought by any of the parties. Moreover, the JNS Parties' objection to the sought extension is particularly hypocritical since they had not produced a single document until 8:20 p.m. on *July 25, 2023*.

Accordingly, Rock Fintek respectfully requests that the Court either allow Rock Fintek's requested extension of the fact discovery through December 31, 2023, or schedule an informal telephonic conference to discuss this matter in advance of Rock Fintek filing a formal motion.

Respectfully submitted,

/s/Phillip Rakhunov
Phillip Rakhunov

cc: All counsel (via ECF)

In light of the length of time this case has been open, the Court is unwilling to grant the four-month extension sought by Rock Fintek, but is open to considering a request for a lesser extension of discovery. The Court directs all other parties to file, no later than July 31, 2023, responses to Rock Fintek's request, including its allegations of document production deficiencies. SO ORDERED.

Paul A. Engelmayer

PAUL A. ENGELMAYER
United States District Judge
July 27, 2023